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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES N. EASTON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A05-0607-CR-389

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable J. Jerome Frese, Judge
Cause No. 71D03-0506-FB-64

March 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Charles N. Easton appeals from his conviction for Burglary,¹ a class B felony. Specifically, Easton contends that there is insufficient evidence supporting his conviction. Finding no error, we affirm the judgment of the trial court.

FACTS

On May 11, 2005, a crew of employees from Aaron's Plumbing was working at Balois Franco-Mendez's residence in South Bend. The crew included Herman Robinson, who is Easton's uncle. At some point while the plumbing crew was working outside the house, Easton arrived, spoke with Robinson, and then "started towards that house." Tr. p. 74-75. Someone informed Easton that there was no one home, but Easton responded that he knew the owners. He then went into the house. In fact, Franco-Mendez neither knew Easton nor gave him permission to enter the residence. A short time later, the plumbers decided to call the police because no one had observed Easton leaving the home. When a police officer arrived and inspected the home, he discovered that certain stereo equipment was missing.

On June 28, 2005, the State charged Easton with one count of class B felony burglary. Following a jury trial, on March 16, 2006, the jury found Easton guilty as charged. At a sentencing hearing on June 27, 2006, the trial court sentenced Easton to fifteen years, with nine years suspended and six years executed. Easton now appeals.

DISCUSSION AND DECISION

Easton argues that the evidence is insufficient to support his conviction. In particular, he contends that there is insufficient evidence supporting his identification as the burglar. As

¹ Ind. Code § 35-43-2-1(1).

we consider this argument, we observe that in reviewing a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. Vasquez v. State, 741 N.E.2d 1214, 1216 (Ind. 2001). Rather, we will examine the evidence and the reasonable inferences that may be drawn therefrom that support the verdict and will affirm a conviction if there is probative evidence based on which a jury could find the defendant guilty beyond a reasonable doubt. Id.

The only witness who testified at trial regarding Easton's identity as the burglar was his uncle, Robinson. Easton argues that Robinson's testimony is "inherently improbable"² because "[n]o one would commit a burglary in broad daylight in front of other witnesses" and because "no one would commit a burglary in the presence of a person who is a relative and who could establish the essential element of the identity of the perpetrator." Appellant's Br. p. 4-5. It could not be clearer that Easton is asking that we reweigh the evidence and judge the credibility of this witness—an invitation we decline. The evidence in the record establishing that Easton was the man who entered Franco-Mendez's residence is undisputed. Consequently, we conclude that there is sufficient evidence supporting his conviction.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

² Easton seeks to apply the "incredible dubiousity" rule, but this rule is limited to cases in which a sole witness presents inherently contradictory testimony and there is a complete lack of circumstantial evidence of the defendant's guilt. Newson v. State, 721 N.E.2d 237, 240 (Ind. 1999). Here, Robinson was not the sole witness testifying at Easton's trial. Moreover, nothing in his testimony is inherently contradictory. To the contrary, he clearly and repeatedly identified Easton—his nephew, with whom he had a personal relationship—as the man who entered the residence. Under these circumstances, the incredible dubiousity rule does not apply.